

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL A. WOOD,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

CASE NO. 2:22-CV-636-DGE-DWC

ORDER DENYING MOTIONS TO  
COMPEL, TO STRIKE AND FOR  
SANCTIONS, AND RE-NOTING  
PENDING MOTIONS

The District Court referred this action to Magistrate Judge David W. Christel. This matter is before the Court on the following motions filed by Plaintiff: (1) motion to strike and motion to compel, which appears to be addressed to the individual Defendants employed by the Bureau of Prisons (“Individual BOP Defendants”) (Dkt. 114); (2) motion for sanctions/relief (Dkt. 115); (3) motion to lift discovery stay / motion to compel (which appears to be directed to the Bureau of Prisons (“BOP”) (Dkt. 116); (4) motion to compel discovery from the Mason County Defendants (Dkt 117); and (5) motion to compel (which appears to address discovery responses by the

1 Individual BOP Defendants) (Dkt. 118).<sup>1</sup> For the reasons discussed below, the Court DENIES  
2 Plaintiff's motions. The Court also re-notes additional pending motions.

### 3 I. BACKGROUND

4 Plaintiff asserts claims under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Federal*  
5 *Narcotics Agents*, 403 U.S. 388 (1971) against his arresting officers from a multi-jurisdictional  
6 task force, alleging they used excessive force and failed to provide medical assistance; Plaintiff  
7 also asserts claims for post-arrest delayed and inadequate medical care against BOP and the  
8 Individual BOP Defendants. Dkt. 18.

9 Several Defendants brought motions to dismiss, and also sought stays of discovery  
10 pending the decision of those motions. This Court granted stays of discovery as to Defendants  
11 Mason County Sheriff's Office, individual employees of the United States Marshall's Service  
12 ("USMS Defendants") and the BOP, and granted a partial stay of discovery as to the Individual  
13 BOP Defendants. Dkts. 60, 89, 113.

14 On July 21, 2023, this Court entered a Report and Recommendations ("R&R")  
15 recommending granting the motions to dismiss of the USMS Defendants and Mason County  
16 Sheriff's Office, and granting in part of the motion brought by BOP. Dkt. 87. The Court also  
17 converted the Individual BOP Defendants' motion to dismiss to a motion for summary judgment,  
18 permitted additional briefing, and permitted discovery from the Individual BOP Defendants  
19 limited to the issue of Plaintiff's exhaustion of his administrative remedies. Dkt. 89.

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23 <sup>1</sup> Also pending are Plaintiff's motion for reconsideration (Dkt 122), which the Court addresses in a separate order,  
24 Plaintiff's motion for leave to file an amended complaint (Dkt. 123), which is not yet ripe for decision, and two  
dispositive motions (Dkts 57 and 85) which the Court re-notes as discussed below.

1 On October 2, 2023, the Court issued an order denying Plaintiff's motion to lift the  
2 discovery stay as to BOP but, in light of the pending discovery stays, the order also struck the  
3 deadlines in the Pretrial Scheduling Order. Dkt. 113.

4 Plaintiff submitted the instant motions on September 18, 2023 (Dkts. 114–117) and  
5 September 29, 2023 (Dkt. 118).<sup>2</sup> Defendants BOP, the Individual BOP Defendants, and the  
6 Mason County Defendants have responded. Dkts. 119, 121, 125. Plaintiff did not file any replies.

7 On October 25, 2023, the Honorable David G. Estudillo, District Court Judge, adopted in  
8 part the R&R, dismissing all claims against the USMS Defendants and Mason County Sheriff's  
9 Office and dismissing all claims against BOP except Plaintiff's claim for injunctive relief to  
10 correct his medical records. Dkt. 127.

## 11 II. DISCUSSION

### 12 A. Motions to Compel Discovery and to Lift Discovery Stay (Dkts. 114, 116, 117, 118)

13 Plaintiff submitted his motions to compel before the Court struck the then-existing  
14 September 18, 2023 discovery deadline. In each of the motions, Plaintiff contends Defendants  
15 have not adequately responded to his requests for discovery. Dkts. 114, 116, 117, 118. Plaintiff  
16 also expresses concern that the then-applicable discovery deadline could prevent his receipt of  
17 discovery for trial. *See, e.g.* Dkt. 116 at 1.<sup>3</sup> Defendants contend they have provided responsive  
18 discovery, but also assert Plaintiff's motions fail to comply with applicable court rules, because  
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21 <sup>2</sup> Because Plaintiff is not a State prisoner subject to e-filing, his filings—as well as the transmission of Court  
22 documents to Plaintiff—are made by mail. Pursuant to the Prison Mailbox Rule, Plaintiff's submissions are deemed  
23 filed on the date he submitted them to prison authorities for mailing, even though they were not actually received by  
the Court until, respectively, October 2, 2023 and October 10, 2023. *See Douglas v. Noelle*, 567 F.3d 1103, 1106-07  
(9th Cir. 2009).

24 <sup>3</sup> That concern is rendered moot by the Court's subsequent striking of the deadline. Dkt. 113.

1 they lack the required certification that Plaintiff has met and conferred with Defendants. Dkts.  
2 119, 121, 125.

3 Before filing a motion to compel discovery, Fed. R. Civ. P. 37 and LCR 37(a)(1) require  
4 the moving party to meet and confer with the party failing to make disclosure or discovery, in an  
5 effort to resolve the dispute without court action. The meeting must be either face-to-face or via  
6 telephone. LCR 37(a)(1). In addition, when filing a motion to compel, the movant must include  
7 in the motion, or in a declaration or affidavit, a certification of such efforts. The certification  
8 must list the date, manner, and participants to the conference. If the movant fails to include such  
9 a certification, the Court may deny the motion without addressing the merits of the dispute. *See*  
10 LCR 37(a)(1).

11 Here, none of Plaintiff's motions include the required certification, nor do they contain  
12 any other indication Plaintiff met and conferred with Defendants. *See* Dkts. 114, 116, 117, 118.  
13 Moreover, counsel for the responding Defendants state that Plaintiff did not meet and confer  
14 with them prior to bringing his motions to compel. Dkt. 120 at ¶ 6; Dkt. 121 at 2; Dkt. 125 at 1.  
15 Because Plaintiff has failed to comply with the meet and confer requirement, the Court DENIES  
16 Plaintiff's motions to compel.

17 Plaintiff also seeks (for the second time) to lift the stay of discovery as to Defendant  
18 BOP. Dkt. 116 at 1. Plaintiff's request is now moot. Discovery was stayed only pending the  
19 resolution of BOP's motion to dismiss. *See* Dkt. 60 at 4. The District Court has now issued its  
20 order adopting in part this Court's Report and Recommendation on the motion to dismiss. Dkt.  
21 127. Thus, the motion to dismiss has been resolved, and the discovery stay has therefore expired.  
22 Plaintiff's motion to lift the stay is therefore DENIED as moot.

**B. Motion to Strike (Dkt. 114)**

Plaintiff's first motion to compel against the Individual BOP Defendants also contains a motion to strike certain evidence those Defendants submitted in support of their pending motion for summary judgment. Dkt. 114 at 1–2. Plaintiff does not raise evidentiary reasons to support why the evidence should not be considered, but instead disputes the accuracy of the evidence. The Court will consider both parties' evidence as appropriate, but declines to strike Defendants' submissions. Accordingly, Plaintiff's motion to strike is DENIED.

**C. Motion for Sanctions (Dkt. 115)**

Plaintiff contends the United States Attorneys Office has a conflict of interest because it is handling both this matter and Plaintiff's criminal prosecution. Dkt. 115. Plaintiff seeks the appointment of an attorney to investigate alleged misconduct, and a monetary sanction. *Id.* at 3.

The Court declines to appoint an attorney to investigate Plaintiff's allegations or to issue monetary sanctions. Plaintiff has not shown a legal basis for relief or made any showing the Court may properly order such relief at this time.

**D. Re-noting Remaining Pending Motions (Dkts. 57, 85, 123)**

The Court previously re-noted the Individual BOP Defendants' motion for summary judgment and provided a schedule for supplemental briefing. Dkt. 89. Defendants timely filed their supplemental briefing on August 11, 2023. Dkts. 96, 97. Plaintiff did not file his Supplemental Response before the September 8, 2023 deadline; instead, he filed the instant motions, asserting Defendants had not provided the discovery he required for a response. Dkts. 114, 118. Defendants' submissions indicate they mailed discovery responses and supplemental responses on, respectively, September 12, 2023, September 26, 2023 and October 16, 2023. Dkt. 121 at 1 and Exs. B, C, D.

1 Plaintiff submitted his Supplemental Response on October 4, 2023. Dkt. 124. It is not  
2 clear how much of Defendants' discovery materials he had received at that time—but, at a  
3 minimum, Plaintiff clearly did not have the documents produced by Defendants on October 16.  
4 Accordingly, Plaintiff should be provided an opportunity, if he wishes, to submit a revised  
5 response incorporating any additional evidence he did not have at the time he submitted his  
6 Supplemental Response. The Court therefor RE-NOTES Defendants' summary judgment motion  
7 to **November 24, 2023** to accommodate further briefing. Plaintiff may submit a Revised  
8 Supplemental Response on or before **November 20, 2023**, but must incorporate all of his  
9 arguments in a single response; if a Revised Supplemental Response is submitted, the Court will  
10 not consider Plaintiff's previously submitted Supplement Response (Dkt. 124). Defendants may  
11 file a reply on or before **November 24, 2023**.

12 The Court also concludes that the remaining pending motions—the Mason County  
13 Defendants' motion to dismiss (Dkt. 85) and Plaintiff's motion to file an amended complaint  
14 (Dkt. 123) should also be re-noted.

15 District courts have “the inherent authority to manage their dockets and courtrooms with  
16 a view toward the efficient and expedient resolution of cases.” *Dietz v. Bouldin*, 136 S. Ct. 1885,  
17 1892 (2016). The Court has inherent power to control its docket “in a manner which will  
18 promote economy of time and effort for itself, for counsel, and for litigants.” *CMAX, Inc. v. Hall*,  
19 300 F.2d 265, 268 (9th Cir. 1962). The exercise of this power is left to the Court's discretion.  
20 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112, 1113 (9th Cir. 2005).

21 Here, the Court finds re-noting both motions will enhance judicial efficiency. Plaintiff  
22 has sought reconsideration of the Court's denial of his request for counsel (Dkt. 122) and the  
23 Court, in a separate Order, has requested a response from Defendants. Plaintiff also seeks to  
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1 amend his complaint. Dkt. 123. If counsel is appointed, counsel might seek leave to file a  
2 different amended complaint; furthermore, if the Court were to grant leave to amend, then the  
3 pending motion to dismiss would become moot. Accordingly, judicial efficiency is best served  
4 by re-noting the motions to be considered simultaneously. If, on the other hand, Plaintiff's  
5 motions were to be denied, the Court could resolve both pending dispositive motions together,  
6 and submit only one report and recommendation to the District Court—which also more  
7 efficiently utilizes judicial resources.

8 Therefore, the Court will re-note Plaintiff's motion to amend (Dkt. 123) and the Mason  
9 County Defendants' motion to dismiss (Dkt. 85) to **November 24, 2023**. As briefing of the  
10 motion to dismiss is already complete, the Court will not accept additional briefing on that  
11 motion.

### 12 III. CONCLUSION

13 For the reasons discussed above, the Court ORDERS as follows:

- 14 1. Plaintiff's motions to compel (Dkts. 114, 116, 117 and 118) are DENIED without  
15 prejudice;
- 16 2. Plaintiff's motion to lift the discovery stay as to Defendant BOP (Dkt. 116) is  
17 DENIED as moot;
- 18 3. Plaintiff's motion to strike (Dkt. 114) is DENIED;
- 19 4. Plaintiff's motion for sanctions (Dkt. 115) is DENIED;
- 20 5. The parties may submit additional briefing of the Individual BOP Defendants'  
21 motion for summary judgment (Dkt. 57) as follows:
  - 22 a. On or before **November 20, 2023**, Plaintiff may submit a Revised  
23 Supplemental Response to Defendant's motion. The response must  
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1 contain all of Plaintiff's arguments; if a revised response is submitted, the  
2 Court will not consider Plaintiff's previous Supplemental Response;

3 b. On or before **November 24, 2023**, Defendants may submit a reply;

4 c. The Clerk is directed to re-note Defendants' motion for summary  
5 judgment (Dkt. 57) for **November 24, 2023**.

6 6. The Clerk is directed to re-note Plaintiff's motion to file an amended Complaint  
7 (Dkt. 123) and the Individual Mason County Defendants' motion to dismiss (Dkt.  
8 85) to **November 24, 2023**. No additional briefing will be accepted on the motion  
9 to dismiss.

10 Dated this 1st day of November, 2023.

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13 David W. Christel  
14 Chief United States Magistrate Judge  
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